

JEAN A. B. DAUTERIVE.

[To accompany Bill H. R. No. 583.]

APRIL 6, 1860.

Mr. NOELL, from the Committee on Private Land Claims, made the following

REPORT.

*The Committee on Private Land Claims, to whom was referred the memorial of the heirs of J. A. Bernard Dauterive, praying for the confirmation of a land claim in Louisiana, called the Bayagon las Concession, would report:*

On the 6th of February, 1835, Congress passed "an act for the final adjudication of claims to lands in the State of Louisiana," (4 Stat. at Large, 749,) by which persons having claims to lands in Louisiana were authorized to present their claims and evidence to the register and receiver of the land office in which the land may lie, and it was made the duty of these officers to make a report on these claims, accompanied by their opinion of the validity of such claim, which was to be laid before Congress.

Under this law the heirs of J. A. Bernard Dauterive filed with the register and receiver of New Orleans a claim for the confirmation of their title to a tract of land in Louisiana. This claim is embraced in the report of the register and receiver of November 22, 1837, which was communicated to the Senate by the Secretary of the Treasury on the 14th of February, 1838, and the report on this claim is in the following words:

"The heirs of Bernard Dauterive claim the confirmation of their title to a tract of land in the parish of Iberville, on the west bank of the Mississippi, having forty-four arpens front, and running back to the Atchafalaya, with the exception of so much thereof as has been confirmed to other persons, or has been sold by the United States, for which they intend to claim compensation from the United States.

"The part of this tract is designated on the returned township plats of township No. 10, range 13 E., as lots 34 to 47 inclusive, but this part (front) is not claimed, but only what still remains unconfirmed or unsold behind the said front tract and between their side lines and the Atchafalaya.

“The above-described tract is a portion of the grant made in 1718 by the Western Company to Paris Duvernay, settled for him in 1719 by Dubuisson and sixty other men, and sold in 1765 by Claude Tremonay de Chamfret, the agent of the said Paris Duvernay, to the said Bernard Dauterive. The portion now claimed is so much of the said original grant as was confirmed to the said Bernard Dauterive by the Spanish governors, O'Reilly and Unzaga; and this claim is made without prejudice to the rights of the claimants to other lands under the said original grant by the Western Company.

“We are, therefore, of opinion that this claim ought to be confirmed.”

The report on this claim never was acted upon by Congress. The memorialists now petition Congress for a final decision upon this report, and declare that they now confine their claim to so much of their original French grant as was confirmed by the Spanish government; and that for so much of the land embraced in the claim to which other parties have acquired titles from the United States they may receive certificates of re-location, to be located upon any public lands of the United States subject to private entry.

On the 17th of June, 1844, Congress passed an act, permitting claimants to land in Louisiana and elsewhere to sue the United States for the confirmation of their titles in the federal courts. The memorialists, believing that their claim was embraced in the provisions of that act, and not having as yet received from Congress a final decision upon the report of the register and receiver of November 22, 1837, brought suit against the United States in the district court of the United States at New Orleans.

That court took jurisdiction of the case, and decided it in their favor. But on appeal to the Supreme Court of the United States, and at the December term thereof, 1853, this decision was reversed, mainly on the ground that the district court had no jurisdiction of the case under the law upon which it proceeded.—(See *United States vs. Dauterive et al.*, 15 How., 14.) The district court having heard all the evidence in the case, and having found all the facts from that evidence, they will here be stated as there found, as follows:

“And the court having maturely considered the same, and being satisfied from the evidence that in or about the latter part of the year 1717, or the beginning of the year 1718, ‘The Western Company,’ a corporation created by letters patent issued by the King of France, to which all the lands, coasts, ports, havens, and islands of the three French provinces of Louisiana were given, granted, and conceded in full property, seignior, and jurisdiction, with authority to sell or give away the said land granted to it, did, with a view to promote the settlement of the said province of Louisiana, grant to Paris Duvernay, a man of great means and influence, a tract of land fronting on the western bank of the Mississippi river, opposite Bayou Manchac, having four leagues front on the Mississippi, and extending in the rear and back to the Atchafalaya river; that early in the year 1718 the said tract of land was settled by a considerable number of persons sent out from France by the said Duvernay, under the directions of one Dubuisson; that very extensive improvements were made upon

the said land, and that the same was occupied, and considerable portions thereof cultivated, from that time until in or about the year 1765, when the agent of the said Duvernay sold the same to Jean Antoine Bernard Dauterive, the ancestor of the present plaintiffs; that the said Dauterive took possession of the same, known as the 'Bayou Gaoula Concession,' and cultivated considerable portions of the front, and made thereon a road, beginning on the Mississippi river, at or near the lower line, and extending to the Atchafalaya, which was known as the Portage Dauterive, and that he continued to occupy the same until his death, in the year 1776.

"And being further satisfied that after the transfer of the said province of Louisiana by France to Spain, under the treaty made between the two governments on the 3d of November, 1762, Don Luis Andry, surveyor general of the said province of Louisiana, acting under the authority of Don Luis de Unzagay Amezaga, governor of the said province under the government of Spain, did, on the 12th day of March, 1772, make a survey of a portion of the said tract comprised in the aforesaid grant acquired by the said Jean Antoine Bernard Dauterive from Duvernay, having forty-four arpens front, on the right bank of the Mississippi river, with the side lines opening and extending to the Atchafalaya, as is represented and described in the plot and process-verbal of said survey on file, and marked 'B No. 21;' and that on the 12th day of July, 1772, the said Unzaga, governor of said province aforesaid, did approve the said survey conformably to the plan and process-verbal of survey of the said Andry, surveyor as aforesaid, with the depth to the Atchafalaya, as shown by the letter of the said Unzaga, attached to the said survey, and marked 'B No. 22,' and that the same was a recognition and confirmation of the title of the said Jean Antoine Bernard Dauterive, who was then a resident of the said province of Louisiana, to the land represented and described in the said plat and process-verbal of survey, with the depth between the side lines to the Atchafalaya river, or a grant anew of the same by the said governor, having full power and authority to grant the same; and that a portion of said tract fronting on the Mississippi river, to the depth of forty arpens from said river, and no more, was disposed of to the Spanish government (or otherwise) by the heirs after the death of the said Dauterive.

"And being further satisfied that the petitioners are the heirs and legal representatives of the said Jean Antoine Bernard Dauterive, and being satisfied that the said grants were and are good and valid grants from the French and Spanish governments, and that more especially the said grant from the Spanish government was and is a good and valid grant, and that it is protected by the treaty made between the United States and the French republic on the 30th of April, 1803, as well as by the laws of nations and the Constitution and laws of the United States, and might have been perfected into a complete grant under and in conformity to the laws, usages, and customs of the government under which the same originated, had not the sovereignty of the country been transferred to the United States."

These are the material facts in the case, as found by the district court, and thereupon the court gave judgment for the land claimed,

with the depth to the Atchafalaya. There are other facts shown by the evidence which are deemed very important.

By the treaty of 1762 France agreed to transfer Louisiana to Spain, but the latter power did not take possession of the colony until 1769, when O'Reilly was sent out with troops to introduce the Spanish rule and put down a rebellion. He treated the inhabitants very harshly, had a number of them tried and executed, and exiled others, and, using his uncontrolled power as he saw fit, among other high-handed acts, ordered the large grant of Paris Duvernay, of which Dauterive was then the proprietor, to be reduced to twenty arpens front. O'Reilly was soon replaced by Unzaga as governor, who, on the petition of Dauterive, consented to leave him in possession of forty arpens front of his original property instead of reducing him to the twenty.

In consequence of this order, Andry, the government surveyor, was sent on the ground, and he made a survey on the 12th of March, 1772, and two reports to the governor, containing an explanation of his operations and a proposition to leave Dauterive in possession of forty-four arpens front on the river, between well-defined side lines, and in the rear to the Atchafalaya, which was the depth of the original French concession.

Dauterive died in possession in 1776, leaving a widow and four infant children. They continued on the land until 1779, when the widow married a man by the name of Degruys and removed with him and her children to Attacapas, where both her husband and her children had property. Shortly after the marriage Degruys and his wife made an agreement with Governor Galvay to transfer to the government the front of the land in question, with the usual depth of forty arpens, and to build thereon a large number of cabins at a stipulated price, which were intended for the reception of settlers from the Canary Islands who then were expected in the colony. Degunys built and was paid for twenty of these cabins, but the governor had in the meantime changed his mind, established the colonists from the Canary Islands on other lands, and gave this land and the cabins thereon to people of French descent who had been expelled by the British from Acadia, and had taken refuge in Louisiana.

Upon these facts two prominent questions present themselves: first, did Dauterive's claim, as confirmed by the Spanish authorities in 1772, extend to the Atchafalaya between the side lines now claimed? Second, has the claim so recognized ever been abandoned or surrendered so as to annex it to the public domain?

On the first point the evidence in possession of the parties is the plan made by Andry; his report thereon of March 12, 1772; another report from him to the governor of the 28th of March, 1772; and a letter dated July 12, 1772, from Governor Unzaga to Dauterive, notifying him that he had approved the proceedings and proposition of Andry. From Andry's plan and the report thereon, (which may be assimilated to field notes,) though Andry seems also to have had the right to give advice and information and make recommendations to the governor, it appears that he examined and measured the front of the tract with care; that he found that if he laid off for Dauterive



only forty arpens front, Dauterive would lose the most valuable part of his clearings, and also a road of four leagues in depth, from the Mississippi to the Atchafalaya, which he had opened through the woods; that, believing that this would not have been the intention of the governor, particularly as the government had made use of this road to transmit despatches to the posts of Attacapas and Opelousas, he had undertaken to extend Dauterive's front to the end of his clearings, thus giving him forty-four arpens two toises front, and to bound him on the road leading to the Atchafalaya, *subject to the approbation of the governor*. Andry thereafter made a second report, in which he informed the governor that he had surveyed the land for Dauterive in such a manner as to include all the improvements and also the road known as Dauterive's portage, of which the governor had himself made use, and "that he had bounded him on this road and its adjoining lines as far as the river Atchafalaya, (as heretofore,) subject to the approbation of your excellency."

The governor expressly approved Andry's operations, and himself informed Dauterive of this decision by a letter dated July 22, 1772.

Andry's plan and the report of March 12, 1772, show that he measured the front line with care; that he determined the magnetic course of the side lines with much precision, and, after consultation with the neighboring proprietors, that he did *not* run the upper side line on the ground, and the lower side line only a distance of about two arpens back, and that he did not close the rear line at all, nor indicate it on the plan in any manner whatever.

Such a survey would at this day appear very imperfect, but it was all that was required or usual in lower Louisiana at that time. The committee have been furnished with very abundant evidence on this subject—the sworn declaration of the surveyor general of the United States for Louisiana, the testimony of other experienced lawyers taken contradictorily with the United States, and certified copies of many old surveys and French and Spanish titles which have been confirmed and located by the United States. From all this evidence, it appears beyond doubt that in lower Louisiana, where the land is all alluvial, and where the land immediately fronting on the river always had most value, and the rear land was always swamp, with occasional ridges of tillable land, the French and Spanish surveyors had a very uniform method, and that was to run the first line on the ground with care, to determine the magnetic bearing of the side lines, which were always straight lines, in the presence of the adjoining proprietors, and to run a part of these side lines on the ground, and sometimes only a very small part. The rear line was frequently not run at all, and it would appear from the evidence that in the grants which extend to a considerable depth it was never run at all, and that very many of the grants in that peculiar section of country ran back to lakes or other watercourses, which was also the depth given to them when they were granted or sold with an indefinite depth. This local custom evidently originated in the natural features of the country. The rear land was both very difficult of access and had very little value in those days. What has thus been shown to have been a general usage is exactly what was done by Andry in this case; and

upon such surveys the title was always granted. If at any time the parties desired to mark their lines on the ground no difficulty was experienced, for the starting point and the course of the side lines was always indicated in the survey, and, as they were always straight lines, they could easily be protracted by any surveyor. As the Spanish surveyors did not run the rear lines of large tracts—always speaking of the alluvial part of Louisiana—they did not represent it on their plans. The depth was always determined by the language of the granting power, which in this case is free from all ambiguity. Andry was commissioned to set apart a portion of an older grant; he ascertains that the depth of the original grant went to the Atchafalaya, and reports that he “*has left Dauterive with a diminished front, but with his old depth, and that he had bounded him on the road he had made as far as the Atchafalaya as heretofore;*” and his proceedings are unequivocally approved by the governor. Unless the most material evidence in the case, viz: the governor’s letter and Andry’s report therein recited, are disregarded, it is impossible to come to any other conclusion concerning the depth of the claim.

As regards the second point, it may be said that the act of Degruys and his wife, transferring the front part of the land to the governor, was wholly unauthorized so far as Dauterive’s infant children were concerned, and that tract does not affect the present claim of the parties interested, which is only for the remainder of the land. They were infants at the time, and were taken away from that section of the country without any exercise of their discretion. In the Spanish times they could neither have sold the rear land, (for land would then be got for the asking,) nor have made any use of it, as it was of very difficult access, and most of it no doubt under water the greater part of the year. They were under no obligation of doing anything concerning it, and subject to no condition. A possession of sixty-seven consecutive years under the French title, and its partial Spanish confirmation, had ripened their claim into a right, fully and irrevocably vested. In 1821 they made efforts to assert this claim, but the public position of their counsel, the late Edward Livingston, prevented his continued attention to it. But by the act of February 6, 1835, a remedy was pointed out to them. They were led to expect and promised a decision of their claim from Congress if they came in under that act; they did so, and obtained a favorable decision from the register and receiver; and they now request Congress to exercise that appellate jurisdiction which they have assumed by the act of 1835. The committee are therefore of opinion that the claim ought to be confirmed, and herewith report a bill for that purpose, and recommend its passage.

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